Supreme Court, U.S.
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No. 96-1786

In The

Supreme Court of the United States

October Term, 1996

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

PAUL KRUEGER,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

OBJECTION TO JURISDICTION AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATED QUESTION PRESENTED FOR REVIEW

Should criminal cases decided under the Illinois Constitution have engrafted upon them the good-faith exception to the exclusionary rule set forth in the case in *Illinois vs. Krull,* a case decided in the U. S. Supreme Court with respect to warrant-less administrative searches in violation of the Fourth Amendment of the U. S. Constitution.

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CASES:

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OTHER AUTHORITIES:

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28 U.S.C. 1257(3) 6

BRIEF IN OPPOSITION

The Respondent, Paul Krueger, respectfully opposes the Petition for Writ of Certiorari to review the opinion and judgment of the Illinois Supreme Court dated December 19, 1996.

OPINION BELOW

On December 19, 1996, the Illinois Supreme Court affirmed the Trial Court of Lake County, Illinois in ruling that the Illinois "No-knock Statute" was unconstitutional. In the second part of its opinion, it held that under the Illinois Constitution of 1970, people had the right to be free from "unreasonable searches and seizures . . . " In so ruling, the Illinois Supreme Court ruled that it need not apply the Federal Doctrine of "Good-faith Exception to the Exclusionary Rule" announced by the U. S. Supreme Court in the case of *Illinois vs. Krull.*

JURISDICTION

The State of Illinois petition for rehearing of the Illinois Supreme Court's ruling was denied on February 3, 1997. The Petitioner here filed late with leave of Court and without objection from the Respondent as to this Petition for Certiorari.

Petitioner's Petition does not fall into one of the three categories defined in U. S. Supreme Court Rule 10. Rule 10 provides that the U. S. Supreme Court may approve a Petition for Certiorari where a U. S. Court of Appeals has made an unusual decision "as to call for an exercise of this Court's supervisory power". The other two provisions of Supreme Court Rule 10 applied to a state court, where the state court had decided "an important question of Federal Law" that either conflicts with or requires a settlement by the U. S. Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution is not applicable to this case. The Illinois Constitution is applicable and those provisions are set forth below:

Art. I, Sec. 6 of the Illinois Constitution 1970 reads:

The People shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

The statement prepared by Petitioner is correct except in one very important respect. No evidence was taken before the trial court which suppressed all evidence seized under the no-knock warrant. The case was submitted before the trial court on the basis of the complaint and the warrant. The Respondent had filed a Motion to Quash citing both the Illinois Constitution as well as the Federal Constitution.

Petitioner mis-paraphrases the decision of the Illinois Supreme Court. The Illinois Supreme Court ruled that "the Good-faith doctrine was not a part of Illinois Constitutional law" where the issue involved an Illinois statute which was attacked on the basis of the Illinois Constitution.

REASONS FOR DENYING THE WRIT

The State of Illinois does not petition this court to reverse the Illinois Supreme Court's ruling that the "No-knock" Statute passed by the Illinois Legislature was unconstitutional. In its petition, it lists as the sole reason for asking for this court's review the need for this court to require the Illinois Supreme Court to apply the Federal "Good-faith exception to the exclusionary rule" to all cases wherein the Illinois Supreme Court determines a search invalid because it was made pursuant to a statute found to be unconstitutional under the Illinois Constitution.

In asking this court to make such a determination, the Petitioner ignores the fact that it must show the court that a "Federal question is involved". The Petitioner invokes 28 U.S.C. 1257(3) as the authority for this courts taking jurisdiction. That statute no longer exists in the form cited. There is no sub-paragraph 3. Subparagraph (a) of Title 28 of the United States Code does permit this court to review by certiorari in cases where (a) the validity of a treaty or U. S. Statute is involved, or (b) where the validity of a Statute of any state is drawn in question on the ground of being repugnant to the Constitution, treaties or laws of the United States, or (c) any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or the statutes of the United States. Although the words "Federal question" is not used in that statutory reference, the words "Federal question" is used in U. S. Supreme Court Rule 10. This court can consider and grant certiorari where a state court of last resort has decided "an important *federal question* in a way that conflicts with the decision of

another state court of last resort of the United States or of a United States Court of Appeal"; or in cases where "an important question of Federal Law that has not been but should be, settled by this court, or has decided an important *federal question* in a way that conflicts with the relevant decisions of this court." [Emphasis added.]

The Petitioner has not attempted to fit itself into any of the categories set forth in Supreme Court Rule 10.

In Petitioner's "Reasons for granting the Writ", the Petitioner argues on the merits the wisdom of the decision of the Illinois Supreme Court. It recites that the Illinois Supreme Court majority "rests the basis for its decision on cases which are entirely unfounded and unsupported in Illinois law." (Page 5 of Petition) It concludes again in arguing the case on the merits that the Illinois Supreme Court was unwise because "The Illinois Supreme Court's refusal to apply the exception [Good Faith exception] is unwarranted, and its reliance on the Illinois Constitution without specific support is disingenuous." (Page 8 of Petition.) The fact that the Petitioner is unhappy with the Illinois Supreme Court after having lost its appeal, and having its petition for reconsideration denied, does not justify Petitioner in asking this court to second guess the Illinois Supreme Court on its determination of Illinois law and the Illinois Constitution.

In its jurisdictional paragraph, the Petitioner claims that the Respondent has asserted an alleged violation of rights arising under the United States Constitution, but Petitioner ignores the fact that the Respondent also alleged the violation of his rights under the Illinois Constitution. In fact, the Illinois Supreme Court ruled in

appendix p. 6 (Petitioner's appendix) as follows as to the defective "No-knock Statute":

> " . . . because the Defendant makes no distinction between the Federal and State provisions in his argument on this issue, we measure his Constitutional protections under both using the same standard . . .
>
> * * *
>
> . . . given this clear conflict between subsection (b)(2) and the Federal and State Constitutions, subsection (b)(2) cannot stand."

Both of those references related to the constitutionality of the no-knock statute.

It is not Respondent's job to justify or to make Petitioner's case for it. Nonetheless, Respondent cites two cases which are authority for the position that a State court has "Supreme power to interpret written and unwritten laws of its state". In the first of those two cases, *Brinkerhoff-Faris Trust & Savings Co. vs. Hill, County Treasurer,* 281 U.S. 673, 50 S. Ct. 451 (1930), the U. S. Supreme Court accepted the petition for certiorari and ruled that the State Court's decision violated a federal right because the state taxing power did not provide due process for Missouri tax payers as provided by the 14th Amendment of the U. S. Constitution. In that case, the Federal question was very clear.

In the second case cited by Respondent, the U. S. Supreme Court accepted a case involving the California Supreme Court's ruling that students protesting a United Nations resolution could utilize a shopping center as a place to promote their beliefs. And as such, the owner of

a shopping center could not deny them access for the purpose of circulating petitions opposing the United Nations resolution. The California Supreme Court ruled that California students had that right under the State Constitution and that permitting that right did not infringe upon the rights of the property owner which were protected by the Federal Constitution. The United States Supreme Court affirmed that decision in *Pruneyard Shopping Center vs. Michael Robins, et al.*, 447 U.S. 74, 64 L. Ed. 2d 741, 100 S. Ct. 2035 (1980). In that case, this court upheld the decision of the California Supreme Court but acknowledged that there was a Federal Constitutional question involved.

Compare that decision with the present case where the Petitioner herein points to no substantial Petitioner's interest under any Federal law or Constitution. Measure the Petitioner's stance here with the language in the *Pruneyard case* which said on p. 81 of the U. S. Report as follows:

> " . . . the authority of the State to exercise its police power or its sovereign right to adopt its own Constitutional individual liberties [is] more expansive than those conferred by the Federal Constitution . . .
>
> * * *
>
> . . . so long as the restrictions do not amount to a taking without just compensation or contravene any other Federal Constitutional provision . . . "

The Illinois Supreme Court ruled that under its Constitution of 1970, a person has greater rights than under

the Federal Constitution. That reasoning was first enunciated in 1930 and reiterated in 1980 by this U. S. Supreme Court.

Petitioner had a duty to bring itself within the purview of Supreme Court Rule 10 or within the statutory language of Title 28. It has failed on both counts. It has attempted in its petition to argue the merits of the case, but has failed to show any Federal question as required for this Court's consideration for a writ of certiorari.

CONCLUSION

Respondent files this brief in opposition but has maintained throughout that this court should not take jurisdiction because of the Petitioner's failure to comply with Supreme Court Rule 14 which requires that Petitioner provide "a direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10." Respondent again asks this court to deny certiorari. The Petition does not state why this Court should take jurisdiction.

Respectfully submitted,

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